



# CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

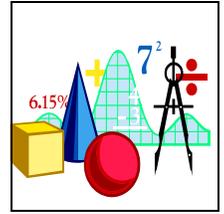
## J. NORMAN STARK, ATTORNEY-AT-LAW

JURIS DOCTOR, B. ARCHITECTURE, B.F.A.

The Stark Building • 1310 East 49<sup>th</sup> Street, Cleveland, Ohio 44114-3803 USA

• (216) 426-8400 • Fax: (216) 426-8411 •

E-Mail: Normstark@aol.com • Homepage: www.Jnormanstark.com



Vol. 2005-10

October, 2005

### ADVERSE POSSESSION – REAL PROPERTY

roperty owners' concerns over their neighbor's "...going over their (property) line..." and whether such acts, over time, may constitute claims against (or adverse) to their property title. Owners may take comfort in knowing that mere use or even trespass cannot support such claims, which are viewed with disfavor in the Courts. The laws of Ohio have defined the acts necessary to constitute and support (claims of) adverse possession:

\*\*\*"...To prevail on a claim of **adverse possession**, the moving party must demonstrate "exclusive **possession** and open, notorious, continuous, and **adverse** use for a period of twenty-one years." *Bohaty v. Centerpointe Plaza Assoc. Ltd. Partnership*, (Feb. 20, 2002), 9th Dist. No. 3143-M at 3, appeal denied (2000), [96 Ohio St.3d 1439](#) , quoting *Grace v. Koch* (1998), [81 Ohio St.3d 577](#) , syllabus. A successful claim of **adverse possession** requires proof of each aforementioned element by way of clear and convincing evidence. *Grace*, [81 Ohio St.3d 577](#), syllabus. Clear and convincing evidence is an intermediate degree of proof that produces in the mind of the trier of fact a solid conviction or belief as to the allegations sought to be established. *Cross v. Ledford* (1954), [161 Ohio St. 469](#) . The Ohio Supreme Court explained that the doctrine of **adverse possession** should be disfavored because a successful claim results in a legal title holder forfeiting ownership to an **adverse** holder without compensation. *Grace*, 81 Ohio St.3d at 580. Thus, the elements of **adverse possession** are stringent, and the burden of proof rigorous. Id. " \*\*\*

\*\*\*

### ACTIONS TO QUIET TITLE

allenges to title (ownership) of real property, unless resolved amicably, may require resolution by litigation to obtain quiet title by judicial decree or order. This procedure is involved and highly technical, and may require representation by experienced counsel.

\*\*\* "¶ 23} Generally, in an action to quiet title, the burden of proof "rests with the complainant as to all issues which arise upon essential allegations of his complaint. He must prove title in himself if the answer denies his title or if the defendant claims title adversely." *Waldock v. Unknown Heirs*, 6th Dist. No. E-89-53, quoting 65 American Jurisprudence 2d (1972) 207, Quieting Title, Section 78. Conversely, "[t]he burden rests upon the defendant to establish a title which he has set up to defeat the complainant's claim of ownership." Id., quoting American Jurisprudence 2d (1972) 209, Section 79. In this case, therefore, the underlying issue of whether the disputed area is in appellants' chain of title is not only material, it is crucial." \*\*\* *Nottke v. Board of Park Commrs.* , 2005-Ohio-323.

\* \* \*

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts of Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Claims, Project Management and Litigation Expert Support. His office is in Cleveland, Ohio.